Affirmed 35 Field. Tuesday Jan. 26. 1875

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 405. 215

THE MECHANICS AND TRADERS' INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

BASIL G. KIGER ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED SEPTEMBER 30, 1873.

SUPREME COURT OF THE UNITED STATES.

No. 495.

THE MECHANICS AND TRADERS' INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

BASIL G. KIGER ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 *Transcript of record from the fifth district court for the parish of Orleans.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

BASIL G. KIGER
versus
SAM'L BOYD & CO., MECHANICS AND TRADERS' Insurance Company, warrantors. } No. 8236.

Petition.—Filed 18th April, 1877.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

BASIL G. KIGER
vs.
SAMUEL BOYD & CO. } No. 8205.

To the honorable the fifth district court for the parish of Orleans:

The petition of Basil G. Kiger, who resides in Warren County,
2 Mississippi, with respect represents:

That he is owner of one hundred and ninety-six bales of cotton, marked ⟨K⟩, which arrived in this city on the steamboat F. R. Pargoud, on 21st March, 1877, and are now stored at Shippers' Press in this city, in the yard of said press, called the Independent Yard, said Shippers' Press being under the management and control of the firm of Sam'l Boyd & Co., composed of Samuel Boyd, Samuel Jamison, jr., and Richard Herrick.

That said one hundred and ninety-six bales of cotton were consigned by your petitioner to his commission merchants and factors in this city, who put the same on deposit and for safe-keeping for account of petitioner in the said cotton press, owned by the defendants, Sam'l Boyd & Co.; petitioner avers that his said factor, the commercial firm of Aiken and Watt, domiciled in this city, have failed, and he fears that the said Sam'l Boyd & Co. will, under directions from said factors or persons
3 claiming in some manner under them, part with and dispose of said bales of cotton, and send the same out of the jurisdiction of this court during the pendency of the suit.

Petitioner avers that said one hundred and ninety-six bales of cotton were consigned by him as aforesaid to said Aiken and Watt, his commission merchants, not for sale, but to be stored and held protected by insurance for further orders.

Petitioner avers that he has demanded and required from said Sam'l Boyd & Co. delivery of said cotton, who refuse to comply with his demand, and it is worth fifty dollars per bale.

Wherefore petitioner prays that, the annexed bond and affidavit considered, a writ of sequestration may issue, and that the defendants, Sam'l Boyd & Co., be cited, and after due proceedings, condemned to deliver said one hundred and ninety-six bales of cotton to petitioner, and in default thereof to pay petitioner the sum of nine thousand eight hundred

dollars, with interest from judicial demand, and one thousand dollars damages; and petitioner prays for general relief.

(Signed) SEMMES & MOTT,
Att'ys for Pl'ff.

4 *Affidavit for sequestration.*

BASIL G. KIGER
vs.
SAM'L BOYD & CO. } No. 8205.

Basil G. Kiger, being duly sworn, says that the facts set forth in the foregoing petition are true, and that he is the owner of the one hundred and ninety-six bales of cotton marked ⟨K⟩, therein described, and now in possession of defendants, Sam'l Boyd & Co., and he fears that said Sam'l Boyd & Co. may, during the pendency of this suit, part with and dispose of and send said one hundred and ninety-six bales of cotton out of the jurisdiction of this court.

(Signed) BASIL G. KIGER.

Sworn to and subscribed before me this 8th day of April, 1877.

(Signed) PAUL T. ABADIE,
D'y Cl'k.

Order of sequestration.

Let a writ of sequestration issue as herein prayed for, upon petitioner furnishing bond, with good and solvent security, in the sum of
5 twenty-five hundred dollars, conditioned as the law directs.

New Orleans, 18th April, 1877.

(Signed) W. H. ROGERS,
Judge.

Bond of sequestration.—Filed 18th April, 1877.

BASIL G. KIGER
vs.
SAM'L BOYD & CO. } No. 8205.

Know all men by these presents that we, Basil G. Kiger, as principal, and Semmes and Mott, Thomas J. Semmes, and Robert Mott, as sureties, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto the clerk of the fifth district court for the parish of Orleans, and his successors in said office, in the sum of twenty-five hundred dollars, lawful money of the United States of America, for which payment, well and truly to be made to the said clerk or his successors, we bind ourselves in solido, and each of our executors, administrators, heirs, and assigns firmly by these presents. Sealed with our seals and dated the 18th day of April, 1877.

Whereas the said B. G. Kiger has this day presented a petition
6 to the fifth district court for the parish of Orleans, praying for a writ of sequestration to issue:

Now, the condition of the above obligation is that we, the *above obligation is that we, the* above bound principal and sureties, will well and truly pay to the said clerk or his successors in office, for the benefit of

any and all persons interested in said suit, all such damages as may be recovered against us in case it should be decided that the said writ was wrongfully obtained.

(Signed) BASIL G. KIGER. [SEAL.]
" SEMMES & MOTT. [SEAL.]
" ROBERT MOTT. [SEAL.]
" THOMAS J. SEMMES. [SEAL.]

Citation to Sam'l Boyd & Co.—Issued 21st April, 1877.

BASIL G. KIGER
vs.
SAM'L BOYD & CO. } No. 8205.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans. In the city of New Orleans.

Messrs. SAM. BOYD & CO.,
New Orleans:

7 You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fifth district court for the parish of Orleans, within ten days after the service hereof.

Witness the honorable Walter H. Rogers, judge of the said court, this 21st day of April, in the year of our Lord 1877.

[SEAL.] (Signed) PAUL T. ABADIE,
Deputy Clerk.

Sheriff's return.

Received April 21st, 1877, and on the 24th April, 1877, I served a copy of the within citation and accompanying petition on Sam'l Boyd & Co., by personal service on Richard Herrick, a member of the firm of Sam'l Boyd & Co.

Ret'd same day.

(Signed) GEO. H. SCHRIEBER,
D'y Sheriff.

Writ of sequestration.—Issued 18th April, 1877.

BASIL G. KIGER
vs.
SAM'L BOYD & CO. } No. 8205.

8 STATE OF LOUISIANA,

Fifth district court for the parish of Orleans.

The State of Louisiana to Thos. H. Handy, civil sheriff of the parish of Orleans, greeting:

You are hereby commanded, in the name of the State of Louisiana and of the fifth district court for the parish of Orleans, to sequester and

take into your possession one hundred and ninety-six bales of cotton marked ⟨K⟩ which arrived in this city on the steamboat F. B. Pargoud on the 21st March, 1877, and are now stored at the Shipper's Press in this city, in the yard of said press called the independent yard, said Shipper's Press being under the management and control of the defendants.

And what you do in the premises you make return thereof, together with this writ, to our said court, as the law directs.

Witness the honorable Walter H. Rogers, judge of our said court, this 18th day of April, in the year of our Lord one thousand eight hundred and seventy-seven, and in the one hundred and first
9 year of the Independence of the United States.

[SEAL.] (Signed) PAUL T. ABADIE,
Deputy Clerk.

Sheriff's return.

BASIL G. KIGER
vs.
SAM'L BOYD & CO. } No. 8205.

Received April 18th, 1877, and on the same day sequestered and took into my possession one hundred and ninety six bales of cotton (196) marked ⟨K⟩ as shown by the notice of seizure hereto attached, which, with the return thereon, is hereof made part. Subsequently, to wit, April 26th, 1877, said seizure was released, and the cotton delivered to plaintiff upon his furnishing his bond to the sheriff, by order of court, in the sum of ten thousand dollars ($10,000), with J. L. Harris & Co. and the individual members of said firm in solido, to wit, J. L. Harris and John M. Parker, writ, order of court, and bond returned, and referred to as part of this return.

Ret'd April 26th, 1877.
(Signed) ROBT. SWAIN,
D'y Sh'ff.

10 *Notice of seizure annexed to writ.*

In the fifth district court for the parish of Orleans.

BASIL G. KIGER
vs.
SAM'L BOYD & CO. } No. 8205.

STATE OF LOUISIANA:

SHERIFF'S OFFICE, PARISH OF ORLEANS,
New Orleans, April 18th, 1877.

TO SAM'L BOYD & CO.:

Please to take notice that by virtue of a writ of sequestration issued in the above mentioned suit, I have seized and taken into my possession one hundred and ninety-six bales of cotton marked ⟨K⟩ which arrived in this city on the steamboat F. R. Pargoud, on 21st March, 1877, and are now stored at the Shipper's Press, in the yard of said press, called

the independent yard, said Shipper's Press being under the management and control of the defendants.

(Signed) J. R. DU CROS,
Deputy Sheriff.

Sheriff's return.

On the 18th day of April, 1877, served a copy of the within notice of seizure on P. J. McGrath, yard clerk of said Boyd & Co., personally, at the Shipper's Press, Terpsichore, between Peters and Front streets.

11

(Signed) JNO. R. RUHTER,
D'y Sh'ff.

Order to bond annexed to writ.

Fifth district court for the parish of Orleans.

B. J. KIGER
vs.
SAM'L BOYD & CO. } No. 8205.

STATE OF LOUISIANA:

THURSDAY, *26th day of April*, 1877.

Present, the honorable Walter H. Rogers, judge.

On motion of Semmes & Mott, of counsel for the pl'ff, and on suggesting that the defendant, Boyd & Co., have filed their answer, and therein declined to bond the cotton sequestered by this court, it is ordered that the plaintiff be allowed to bond said one hundred and ninety-six bales of cotton, on giving bond in the sum of ten thousand dollars and according to law.

Extract from the minutes.

[SEAL.] (Signed) PAUL T. ABADIE,
Deputy Clerk.

12 *Bond to release sequestration.*

BASIL G. KIGER
vs
SAM'L BOYD & CO. } No. 8205.

Know all men that we, Basil G. Kiger, as principal, and J. L. Harris & Co., and the individual members of said firm, to wit, J. L. Harris & John M. Parker, are held in solido unto Thos. H. Handy, civil sheriff of the parish of Orleans, in the State of Louisiana, in the penal sum of ten thousand dollars ($10,000), for the payment whereof to the said sheriff Thos. H. Handy, civil sheriff, his executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, respectively, by these presents; as witness our respective names, hereunto affixed at New Orleans, this twenty-sixth day of April, in the year eighteen hundred and seventy-seven.

Whereas, in and by virtue of a writ of sequestration, issued out of the honorable the 5th district court for the parish of Orleans,

13

at the suit of Basil G. Kiger vs. Sam'l Boyd & Co. and numbered 8205 on the docket of the said court, and which suit is now pending therein, the following described property to

wit: "One hundred and ninety-six bales of cotton marked Ⓚ" has been seized, taken into the custody of the said sheriff, and detained according to law, but the same has been released and delivered to the plaintiff by order of court, upon the appearance of the plaintiff in the said suit, and delivering to the said sheriff the present obligation.

The condition of which is such, that if the said plaintiff shall not send the above described property out of the jurisdiction of the court, and that he will faithfully present the same in case he should be decreed to restore the same to the sheriff, and shall satisfy such judgment as may be rendered in the suit pending as above mentioned, then this obligation to be void, or else to remain in full force.

(Signed) B. G. KIGER.
" J. L. HARRIS & CO.
" JNO. M. PARKER.
" J. L. HARRIS.

Signed and delivered in presence of—
(Signed) ROBT. SWAIN.

14 (Signed) THOS. C. MURPHY.

Transfer.

STATE OF LOUISIANA:

OFFICE CIVIL SHERIFF, PARISH OF ORLEANS,
New Orleans, April 26, 1877.

I do hereby transfer, assign, and set over to defendant herein all my right, title, and interest in and to the within bond.

(Signed) THOMAS H. HANDY,
Civil Sheriff,
By ROBT. SWAIN,
D'y Sh'ff.

Supplemental petition.—Filed 23d April, 1877.

Fifth district court for the parish of Orleans.

BASIL G. KIGER
vs.
SAM'L BOYD & CO. } No. 8205.

To the honorable the fifth district court for the parish of Orleans.

The supplemental petition of Basil G. Kiger with respect represents:

That since the seizure of the cotton described in the original petition, and sequestration of the same by the sheriff under the
15 writ issued in this case, your petitioner has been informed that the Mechanic's and Traders' Insurance Company, a corporation created under the laws of this State, domiciled in New Orleans, claims some title or interest in said cotton by virtue of two warehouse or cotton press receipts issued by the defendants, Samuel Boyd & Co., one for one hundred bales, and the other for ninety-six bales of said cotton; that said receipts were issued by said Samuel Boyd & Co., to said Aiken & Watt, the factors of petitioner, on the 26 of March, 1877, and April 4th, 1877, and peti-

tioner is informed that said Mechanics and Traders' Insurance Company claim title to said cotton as pledge's thereof, for advances made to said Aiken and Watt. Now, your petitioner avers that any title claimed by said insurance company as pledgees aforesaid or otherwise, is null and void, and said cotton press receipts gave Aiken and Watt no authority to pledge or dispose of the cotton therein described, the same being the property of your petitioner, and your petitioner being in no manner indebted to said factors, who never were authorized to pledge said cotton or dispose of the same.

Petitioner avers that said Samuel Boyd & Co. would, with the consent of the said insurance company, and on the surrender of the said receipts, deliver the said cotton to petitioner, but they are prohibited from so doing by the unlawful detention of said receipts and by the express orders of said insurance company.

Your petitioner avers that the unlawful conduct of said insurance company has subjected your petitioner to the expense of employing counsel to vindicate his rights, and has occasioned and will occasion other damages in the aggregate amounting to two thousand dollars.

Wherefore petitioner prays that this supplemental petition, as well as the original petition filed in this suit, be served on the said Mechanics and Traders' Insurance Company, that it be cited to appear and answer the same, and that judgment be rendered declaring petitioner the owner of said cotton, and said alleged pledge or other title claimed by said insurance company null and void; and that it be decreed to surrender and cancel said receipts, and that petitioner recover said cotton or its value, as set forth in the original petition, also two thousand dollars damages, and for general relief.

(Signed) SEMMES & MOTT,
Attorneys for Petitioner.

Order to file supplemental petition.

BASIL G. KIGER
vs.
SAML. BOYD & Co. } No. 8205.

Let this supplemental petition be filed and served.
New Orleans, 23d April, 1877.
(Signed) W. H. ROGERS,
Judge.

Citation to Mechanics and Traders' Insurance Company. — Issued 23d April, 1877.

BASIL G. KIGER
vs.
SAM. BOYD & Co. } No. 8205.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans, in the city of New Orleans.

To the Mechanics and Traders' Insurance Company:

You are hereby summoned to comply with the demand contained in the petitions, original and supplemental, of which a copy accompanies

this citation, or deliver your answer to the same in the office of the clerk of the fifth district court for the parish of Orleans, within ten days after service hereof.

Witness the honorable Walter H. Rogers, judge of the said court, this 23d day of April, in the year of our Lord 1877.

[SEAL.] (Signed) PAUL T. ABADIE,
Deputy Clerk.

Sheriff's return.

Received April 23d, 1877, and on the 25th day of the same month and year served a copy of the within citation and accompanying petitions, original and supplemental, on the Mechanics and Traders' Insurance Company through L. R. Coleman, president, in person.

Ret'd same day.

(Signed) WM. J. GRADY,
D'y Sh'ff.

19 *Answer and call in warranty.—Filed 26th April*, 1877.

BASIL G. KIGER *vs.* SAM. BOYD & CO. } No. 8205.

In the fifth district court for the parish of Orleans.

Now come the defendants, Sam'l Boyd & Co., and for answer to plaintiff's petition deny the facts therein stated, and say that they have no interest in the cotton sequestered in this case, other than having given two cotton press receipts for the same, which are now in the hands of the Mechanics and Traders' Insurance Company of New Orleans, which these respondents require to be delivered to them, or that the same be canceled and annulled before they be deprived of the possession of said cotton; that these respondents do not intend to bond said cotton.

Wherefore respondents pray that said insurance company be called in warranty to defend this suit, they be fully protected in all their rights, and they submit themselves to the order of the court for that pur-
20 pose, and in case judgment is rendered against them, that they have judgment against said ins. co.

(Signed) SAM. BOYD & CO.

Order to file answer and call in warranty.

BASIL G. KIGER *vs.* SAML. BOYD & CO. } No. 8205.

Let this answer and call in warranty be filed and served as herein prayed for and according to law.

New Orleans, 26th April, 1877.

(Signed) W. H. ROGERS, *Judge.*

Citation to Mechanics and Traders' Insurance Company.—Issued 27th April, 1877.

BASIL G. KIGER
vs.
SAML. BOYD & CO. } No. 8205.

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans, in the city of New Orleans.

Mechanics and Traders' Insurance Co.:

You are hereby summoned to comply with the demand contained in the answer and call in warranty, of which a copy accompanies
21 this citation, or deliver your answer to the same in the office of the clerk of the fifth circuit court for the parish of Orleans within ten days after the service hereof.

Witness the Honorable Walter H. Rogers, judge of the said court, this 27th day of April in the year of our Lord 1877.

[SEAL.] (Signed) PAUL T. ABADIE,
Deputy C'lk.

Sheriff's return.

Received April 27th, 1877, and on the 27th day of the same month and year served copy of the within citation, and accompanying answer, and call in warranty, on the Mechanics and Traders' Insurance Co., through Lloyd R. Coleman, president, in person.

Ret'd same day.

(Signed) WM. J. GRADY,
D'y Sh'ff.

Order to bond, &c.—Minutes of April 26th, 1877.

BASIL G. KIGER
vs.
SAM'L BOYD & CO. } No. 8205.

22 On motion of Semmes & Mott, of counsel for the plaintiff, and on suggesting to the court that the defendants, Boyd & Co., have filed their answer, and therein declined to bond the cotton sequestered in this court, it is ordered that the plaintiff be allowed to bond said one hundred and ninety-six bales of cotton on giving bond in the sum of ten thousand dollars, and according to law.

Petition for removal.—Filed 9th May, 1877.

BASIL G. KIGER
vs.
SAM'L BOYD & CO. } No. 8205.

Fifth district court for the parish of Orleans.

To the honorable the judge of the fifth district court for the parish of Orleans:

The petition of the Mechanics and Traders' Insurance Company, a cor-

poration under the laws of Louisiana, domiciled in the city of New Orleans, respectfully represents:

That Basil G. Kiger, the plaintiff in this suit, is a citizen of the State of Mississippi, and the defendants, the said Mechanics and Traders'
23 Insurance Company, and Sam'l Boyd & Co., are citizens of the State of Louisiana.

Your petitioner further states that the matter in dispute and controversy herein exceeds the sum or value of five hundred dollars exclusive of costs, and that petitioner desires to remove this suit into the circuit court of the United States for the fifth circuit and district of Louisiana.

Wherefore, in consideration of the annexed bond, your petitioner prays for the removal of this suit to the said United States circuit court, and that this court will order and direct such removal to be made.

(Signed) H. N. OGDEN,
THO'S HUNTON,
Atty's for Petitioner.

Order for removal.

Let this cause be removed as prayed for.
N. O., May 9, '77.
(Signed) W. H. ROGERS, *Judge.*

Bond for removal.—Filed 9th May, 1877.

BASIL G. KIGER
versus } No. 8205.
24 SAM'L BOYD & CO. & AL.

Know all men by these presents, that we, the Mechanics and Traders' Insurance Company of New Orleans, as principle, and Ben. Gerson as surety, are held and bound unto Basil G. Kiger in the sum of five hundred dollars, for the payment of which we bind ourselves, our heirs and assigns.

The condition of the foregoing obligation is such that if the said Mechanics and Traders' Insurance Company shall enter in the circuit court of the United States for the fifth circuit and district of Louisiana, on the first day of its next session, and shall pay all costs that may be awarded by the said circuit court, if said court shall hold that this said suit was improperly or wrongfully removed thereto, then this obligation to be void, otherwise to remain in full force and virtue.

In witness whereof the said insurance company, as principal, and the said Ben. Gerson, as surety, have hereunto set their hands and seals this 5th day of April, 1877.

(Signed) LLOYD R. COLEMAN, [SEAL.]
25 *Pr's'd't of the M. & T. Ins. Comp'y of N. O.*
(Signed) BEN. GERSON. [SEAL.]

App'd.
(Signed) W. H. ROGERS, *Judge,*

STATE OF LOUISIANA:

Fifth district court for the parish of Orleans.

I, Thomas Duffy, clerk of the fifth district court for the parish of Orleans, do hereby certify that the foregoing twenty-five pages contain a

full and complete transcript of all the proceedings had and all the documents filed in the case wherein Basil G. Kiger is plaintiff and Sam'l Boyd & Co. and the Mechanics and Traders' Insurance Company are defendants, instituted in the aforesaid court under the No. 8205.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-seven, and in the one hundred and first year of the Indep'ence of the United States of America.

[SEAL.] (Signed) THOMAS DUFFY,
Clerk.

26 I, Walter H. Rogers, sole judge of the fifth district court for the parish of Orleans, do hereby certify that Thomas Duffy is the clerk of said court, and that the signature "Thos. Duffy, clerk," to the foregoing certificate is in the proper handwriting of him, the said Thomas Duffy, clerk; to his official acts as such, full faith and credit are due and owing, and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the 23d day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

(Signed) W. H. ROGERS,
Judge.

I, Thomas Duffy, clerk of the fifth district court for the parish of Orleans, do hereby certify that Walter H. Rogers, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same sole judge of the fifth district court for the parish of Orleans, duly elected and commissioned and qualified as such, and that said attestation is in due form of law.

27 Witness my hand and the seal of said court this 23d day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] (Signed) THOMAS DUFFY,
Clerk.

PROCEEDINGS IN THE CIRCUIT COURT OF THE UNITED STATES.

Exception of Mechanics and Traders' Insurance Co. to call in warranty.—Filed June 7th, 1877.

U. S. cir. court.

BASIL G. KIGER
vs.
SAM'L BOYD & Co.

Now comes the Mechanics and Traders' Insurance Company and excepts to the call in warranty filed herein by Sam. Boyd & Co., and says that the same does not authorize the said Boyd & Co. to call or cite the said ins. company in warranty in this suit.

Wherefore the said insurance company prays that said call in warranty be dismissed.

(Signed) H. N. OGDEN,
Att'y for Mechanics & Traders' Insurance Co.

(Signed) THOS. HUNTON,
Att'y.

28 *Answer of Mechanics and Traders' Insurance Company.—Filed June 7th*, 1877.

U. S. cir. court.

BASIL G. KIGER
vs.
SAM. BOYD & CO. ET AL. } No. 8236.

Now comes the Mechanics and Traders' Insurance Company, made defendant in the above entitled suit, and, for answer to the original and supplemental petition of plaintiff, denies all the allegations thereof except such as are hereinafter admitted.

This defendant denies that the plaintiff is, or was at the date of the institution of this suit, the owner of the one hundred and ninety-six bales of cotton sequestered herein, and denies that the said cotton was stored or held as alleged in the cotton press of Boyd & Co. for account of the plaintiff.

On the contrary, defendant alleges that on the 26th day of March, 1877, Aiken & Watt, a commercial partnership doing business in New Orleans, were in possession of the said 196 bales of cotton marked

29 ⟨K⟩, which was on storage in the cotton press of said Boyd & Co. in New Orleans, and which had been stored by the said Aiken & Watt, who had taken the press receipts therefor in their own names; and defendant avers that the said Aiken & Watt had the sole control of said cotton, with the right and power to dispose of the same as owners and to give and transfer an absolute or qualified right and title thereto.

Defendant further alleges that on the said 26th day of March, 1877, the said Aiken and Watt borrowed of this defendant the sum of ($4,500) forty-five hundred dollars, for which they gave their promissory note to said insurance co., defendant, payable forty days after date and bearing interest at the rate of eight per cent. per annum after maturity, and in order to secure the payment of the said note transferred to this defendant one hundred of the said bales of cotton, and delivered possession of the same by giving the defendant the written unconditional acknowledgment of Sam Boyd & Co., the bailees of said cotton, that it was deliverable to this defendant, the said insurance co., or order,

30 and it was understood and agreed at the time that this defendant should hold the said cotton to secure the payment of said note.

Defendant further shows that on the 3d of April, 1877, or thereabouts, the said Aiken and Watt applied to this defendant for a further loan of $2,500 on like security, which this defendant agreed to make and advance, and the said Aiken and Watt, in consideration of this, obtained and delivered to defendant the written acknowledgment of the said Boyd & Co. that the remaining 96 bales of said cotton were deliverable to this defendant or order, and defendant avers that this receipt and acknowledgment of Boyd & Co. and the said 96 bales of cotton were transferred and delivered to defendant to secure the payment of this said loan of $2,500, for which the said Aiken and Watt gave another note dated April 4th, 1877, payable thirty days after date to the order of this defendant, and it was understood and agreed at the time

31 that defendant should hold this 96 bales of cotton to secure the payment of the said note for $2,500.

This defendant further shows that the said notes of Aiken and Watt have been duly protested for non-payment, and are still due and unpaid.

The said notes and cotton-press receipts of Boyd & Co. are annexed and made part of this answer.

Defendant alleges that the loans to Aiken & Watt hereinbefore mentioned were made in good faith, and upon the credit and security of the transfers to them of the said cotton and the press receipts of Sam'l Boyd & Co., stipulating that said cotton was deliverable to them, and defendant avers that at the time said loans were made and the said notes given the said insurance company had no knowledge, information, or belief that the plaintiff had any claim to or interest in the said cotton.

Wherefore they pray that plaintiff's claim be rejected, and that there be judgment for defendant with costs.

(Signed) THOS. HUNTON,
32 *For Mechanics & Traders' Ins. Co., D'f't.*
(Signed) H. N. OGDEN,
Att'y for Mechanics & Traders' Ins. Co.

Order, exception overruled, &c.—Extract from the minutes November term, 1876.

NEW ORLEANS, *Tuesday, January 15th,* 1878.

Court met pursuant to adjournment.

Present, Hon. W. B. Woods, circuit judge.

BASIL G. KIGER
vs. } No. 8236.
SAM'L H. BOYD & CO.

This cause was called for trial—Thos. J. Semmes, for plaintiff; Hornor & Benedict, for Sam'l H. Boyd & Co.; Thomas Hunton, for Mechanics & Traders' Ins. Co.—when the exception of the Mechanics & Traders' Insurance Co. to call in warranty was taken up, and after hearing arguments of counsel, it was ordered that said exception be overruled, and that said Mechanics and Traders' Insurance Co. have until the 16th day of January, 1878, to file their answer.

It was further ordered that the cause be continued until Thursday, 17th instant, at 11 a. m.

33 *Default against Mechanics and Traders' Insurance Co.—Extract, from minutes of Jan'y* 16, 1878.

BASIL G. KIGER
vs. } No. 8236.
SAM'L H. BOYD & CO., ET AL.

On motion of Hornor & Benedict, of counsel for Sam'l H. Boyd & Co., and on showing to the court that the Mechanics and Traders' Insurance Company have failed to file their answer to the call in warranty herein as directed by order of court made on yesterday, ordered that judgment by default be entered against them.

Motion and order default set aside.—Extract from the minutes of Jan'y 17th 1878.

BASIL G. KIGER
vs. } No. 8236.
SAM'L H. BOYD & CO., ET ALS.

On motion of Tho's Hunton and H. N. Ogden, attorneys for the Me-

chanics and Traders' Insurance Company, and on filing answer to call in warranty of Sam'l H. Boyd & Co., ordered that judgment by default herein entered on 16th instant be set aside.

34 *Exception and answer to call in warranty and demand in reconvention.—Filed January 17th*, 1878.

U. S. cir. court.

BASIL G. KIGER *vs.* SAM BOYD & CO. } No. 8236.

Now comes the Mechanics and Traders' Insurance Co., a citizen of the State of Louisiana, incorporated under the laws of said State, and domiciled in the city of New Orleans, and not waiving the exception filed herein and pleaded to the call in warranty made by Sam Boyd & Co., a firm and partnership composed of Samuel Boyd, Samuel Jamison, jr., and Richard Herrick, all of whom are citizens of the State of Louisiana.

And further excepting that this court is without any jurisdiction to entertain or try any issue herein between the said Boyd & Co. and the said Mechanics and Traders' Insurance Company, because both of the parties are citizens of the State of Louisiana, nevertheless, if said exceptions are overruled, and not otherwise, the said insurance company for answer to the call in warranty of the said Boyd & Co., saith: That
35 on or about the 26th day of March, 1877, Aiken and Watt, a commercial partnership of New Orleans, proposed to borrow of this company the sum of $4,500, and as an inducement and security for the loan tendered to the company the cotton-press receipt of Sam Boyd & Co. for 100 bales cotton, deposited in the press yard by said Aiken & Watt, and stipulating on the face of the receipt that said cotton was deliverable to the Mechanics and Traders' Ins. Co., this defendant.

The loan was made to Aiken & Watt of $4,500, for which they gave their note, payable forty days after date with interest at the rate of eight per cent. per annum from maturity until paid, and the press receipt of Boyd & Co. for 100 bales of cotton deliverable to defendant was accepted and received from Aiken and Watt as security for the payment of said note.

This defendant further states and answers that on the fourth day of April, 1877, a similar transaction between Aiken & Watt and defendant occurred, and that defendant loaned to said Aiken & Watt the further sum of $2,500, for which they gave their promissory note, and
36 transferred and delivered to this defendant another receipt of Sam Boyd & Co. for 96 bales of cotton to secure the payment of their said note, which receipts also expressed in terms that the said cotton was deliverable to the Mechanics and Traders' Insurance Company or order.

And this defendant states, further, that at the maturity of the said notes, they were protested for non-payment, and that Aiken and Watt are adjudicated bankrupts.

Copies of the said cotton-press receipts which were signed by Sam Boyd & Co., and also of said promissory notes, are filed herewith and made part of this answer, the originals of the same being on file in the suit of the Mechanics' and Traders' Bank vs. Sam'l Boyd & Co., in the third district court for the parish of Orleans.

Further answering, defendant says that the said loans were made to Aiken and Watt in good faith, this defendant relying for security for the payment of said notes solely upon the press receipts afore-
37 said, and upon the acknowledgment of Boyd & Co. that the said cotton was deliverable to this defendant.

Defendant further says, that at the time the aforesaid loans to Aiken and Watt were made, defendant had no knowledge whatever that the plaintiff, B. G. Kiger, or any other person than Aiken and Watt, had any interest whatever in the cotton described in said receipts.

Defendant further states that they were cited in warranty herein, on the 27th day of April, 1877; that prior to that date the said Sam Boyd & Co., the original defendants in this suit, had filed their answer herein, and admitted that they did not intend to bond the cotton claimed by Kiger, the plaintiff, and thus permitted the said Kiger to take possession of said cotton upon a bond, before he was allowed by law to do so, if his application to bond had been approved, and thus render it impossible for this defendant to maintain the said Boyd & Co., or itself, in the possession of the said cotton.

And so the defendant says that the said Boyd & Co., having by
38 their pleadings and admissions disclaimed any interest in the said cotton, and abandoned the possession of the same to the first claimant thereof without any knowledge of validity of his claims, is not entitled to any judgment whatever against this defendant, or his demand in warranty.

Wherefore defendant prays that said demand or call in warranty be dismissed; and now, assuming the character of plaintiffs in reconvention against the said Sam Boyd & Co., this plaintiff in reconvention adopts all the statements and averments of the foregoing answer, as averments and allegations of this defendant in reconvention, and further avers that on or about the 6th of June, 1877, a demand was made by plaintiff in reconvention on Sam Boyd & Co. for the delivery of the said 196 bales of cotton to the said insurance company, which was refused; that the value of the said cotton mentioned in the receipts aforesaid was more than sufficient to pay the two notes; are still due and unpaid, and are still held and owned by said insurance company.

39 Wherefore plaintiff in reconvention prays that Sam Boyd & Co., a firm composed of Samuel Boyd, Samuel Jamison, jr., and Richard Herrick, be condemned to deliver to the Mechanics and Traders' Insurance Company the 196 bales of cotton mentioned and described in the receipts hereinbefore mentioned, or in default thereof that the said insurance company have judgment against Sam Boyd & Co., and the members of said firm, for the sum of forty-five hundred dollars ($4,500) with interest thereon at the rate of eight per cent. per annum, from the 8th of May, 1877, and for the further sum of twenty-five hundred dollars ($2,500) with interest at the rate of eight per cent. from May 7th, 1877, until paid, and $4 costs of protest, and for general relief.

(Signed) THOS. HUNTON,
Att'y for Pl'ff.

Answer to plea in reconvention.—Filed January 17th, 1878.

U. S. circuit court, district of Louisiana.

BASIL G. KIGER
vs.
SAM'L BOYD & CO. & MECHANICS & TRADERS' INS. CO. } No. 8236.

Now comes Samuel Boyd & Co., defendants herein, and for answer

to the reconventional demand herein filed against them by the Mechanics and Traders' Insurance Company upon these defendants' call in warranty of it, pleads a general denial, and avers that at the time these defendants filed their answer in this case declined to bond, the said insurance company had also notified plaintiff and his counsel that they would not bond, and that notice was given in order that pl'ff might bond.

Wherefore they pray that said reconventional demand be dismissed with costs and for general relief.

(Signed) HORNOR & BENEDICT,
Atty's.

Verdict.—Extract from minutes of January 17th, 1878.

BASIL G. KIGER
vs.
SAM'L H. BOYD & CO. & AL. } No. 8236.

This cause came on for trial—Thos. J. Semmes for plaintiff; Hornor & Benedict for S. H. Boyd & Co.; Thos. Hunton for Mechanics & Traders' Insurance Co., warrantors, when the following jurors were called and sworn to try the issue:

1. G. W. Zacharie.
2. C. H. Beggs.
3. Oscar F. Stone.
4. Adolphe Broussard.
5. Sylvester Ward.
6. Henry Mason.
7. Christian Neff.
8. C. H. Asmus.
9. H. Kakernah.
10. G. P. Nelson.
11. John Burrows.
12. C. L. Garcia.

And the jury being complete, George W. Zacharie was appointed foreman.

When, the court having overruled the exception of the Mechanics and Traders' Insurance Company to the jurisdiction, the trial proceeded, and after hearing the pleadings, evidence, and argument, and receiving a charge from the court, the jury retired to consider on their verdict. And after due deliberation they returned into court and delivered the following verdict, to wit:

"We, the jury, find in favor of B. G. Keiger as the lawful owner of the cotton and entitled to possession, and we further find a verdict in favor of Sam'l Boyd & Co., in call in warrantee. We find for Sam'l Boyd & Co. against the Mechanics and Traders' Insurance Company in reconvention.

"New Orleans, 17th Jan'y, 1878.
"GEORGE W. ZACHARIE,
"*Foreman.*"

Whereupon it was ordered that the same be recorded.

Judgment.—Extract from judgment book, November term, 1877.

NEW ORLEANS,
Saturday, January 19th, 1878.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

BASIL G. KIGER
vs.
SAM'L BOYD & CO. ET AL. } No. 8236.

By reason of the verdict of the jury and in accordance therewith, it is ordered, adjudged, and decreed that the plaintiff, Basil G. Kiger, be recognized as the true and lawful owner of the one hundred and ninety-six bales cotton, marked ◇K◇, by him sequestered on March 21st, 1877, in the Shippers' Press of the city under the control and management of the defendants Sam'l Boyd & Co., and that as such owner he is entitled to the possession of the same.

It is further considered that the bond furnished by said Kiger for the release of said cotton be cancelled and annulled.

43 And it is further adjudged and decreed that on the call in warranty there be judgment in favor of the defendants Sam'l Boyd & Co., and against the Mechanics and Traders' Insurance Company, warrantors; and that the demand in reconvention of said Mechanics and Traders' Insurance Company against Sam'l Boyd & Co. be dismissed, said insurance company paying costs of suit.

Judgment rendered January 19th, 1878.

Judgment signed January 23d, 1878.

(Signed) W. B. WOODS, *Judge.*

Four bills of exceptions.—Filed January 23d, 1878.

U. S. circuit court for the district of Louisiana.

B. G. KIGER
vs.
SAM. BOYD & CO. ET AL. } No. 8236.

THE MECHANICS AND TRADERS' INSURANCE Co. in warranty and plaintiffs in reconvention
vs.
BOYD & CO.

Be it remembered that on the trial of this case evidence was introduced tending to show that the plaintiff Kiger, residing in Mississippi, consigned to Aiken and Watt, his factors in New Orleans,

44 196 bales of cotton of which the said Kiger was owner, and which had been grown on his plantation, with instructions contained in his letter of March 19th and March 24, 1877.

Letter of March 19th, 1877.

[Isaac Bonham, successor to Bonham & Mitchell, cotton factors & commission merchants.]

VICKSBURG, MISS., *March 19th, 1877.*

MESSRS. AIKEN & WATT:

GENT.: I to-day ship per Pargoud one hundred and ninety six bales of cotton. I think you will find it throughout an even and good lot. It is useless in the present state of the market to offer it for sale; it looks as if the whole thing was in the hands of the bears, and I regret to say that the universal opinion of people up this way is that the factors with

but few exceptions in New Orleans are interested in this gambling and making every exertion to depress prices. I could have at one time sold this cotton on the place at 12 or 12½ cts., and have committed a fatal error in holding it. Have it sampled at your leisure and write me what it would probably command.

45 I to-day send an order to St. Louis for some 6 or 700 dollars' worth of necessaries, that I shall have to draw upon you for about the last of the month.

Yours truly,

B. G. KIGER.

Letter of March 24th, 1877.

[Office of Hardaway & Co., wholesale druggists, Washington street.]

VICKSBURG, MISS., *March 24th*, 1877.

Messrs. AIKEN & WATT:

GENT'N: I rec'ed your letter here to-day; notice what you say with regard to the cotton. I do not wish to sell at those prices under any circumstances. I think cotton must improve, in view of the light receipts. Do not sell at any price without advice from me.

Yours truly,

B. G. KIGER.

I intended to advise you that I had sent an order to St. Louis which would, about the 1st of April, involve a dr'ft on you for some 600 dollars. Your not alluding to it in your letter makes me think it possible that I failed to do so.

KIGER.

46 That said cotton was received by Aiken and Watt and stored in the cotton press of Boyd & Co.

That subsequently Aiken and Watt obtained from the said Mechanics and Traders' Insurance Company a loan for their own use, for which they gave their two notes for $7,000, described in the answer of said insurance company, and at the time of the loans Aiken and Watt transferred and delivered to the said insurance company the two receipts of Sam Boyd & Co., as follows:

Copy of cotton-press receipts of Sam. Boyd & Co.

NEW ORLEANS, *March 26th* 1877.

Received from Aiken and Watt the following described property, to wit:

One hundred bales cotton marked ⟨K⟩ ex Pargoud, March 27, 1877.

Shipper's Press.

(Printed endorsement in the body of receipt:) "The within cotton will not be delivered except upon the return of this receipt to the press, properly endorsed."

Deliverable to Mechanics and Traders' Insurance Co., or order.

(Signed) SAM. BOYD & CO.

47 The above-described property is covered by insurance to the amount of forty-four hundred dollars for the term of ninety days in the Mechanics and Traders' Ins. Co.; loss, if any, payable to the Mechanics and Traders' Ins. Co.

Endorsement on the back of the receipts printed: "Deliver to or order, the within-described property."

The above order is accepted, and the property is transferred to said .

(Signed) SAM BOYD & CO.

Cotton press receipt of Sam Boyd & Co.

NEW ORLEANS, *April 3d*, 1877.

Received from Aiken & Watt the following-described property, to wit:

Ninety-six bales cotton, marked ⟨K⟩ ex Pargoud, March 21, '77.

Shipper's Press.

Printed endorsement in the body of the receipt: "The within cotton will not be delivered except upon the return of this receipt to the press properly endorsed."

Deliverable to Mechanics & Traders' Ins. Co., or order.

(Signed) SAM BOYD & CO.,
Independent Yard.

48 On the back of the receipt is the following printed endorsement:

Deliver to or order, the within-described property.

The above order is accepted, and the property is transferred to said .

(Signed) SAM BOYD & CO.

On the faith of which, and as security for said loans, the said receipts were taken and received by the insurance company. That at the date of the said loans, and at the time the said cotton was received and stored at Aiken and Watt, Kiger was not indebted to them, nor was he at any time indebted to them, but that on the contrary, they were at the time abovementioned indebted to him the said Kiger in a large amount and still are.

That at the maturity of said notes given by Aiken and Watt they were protested for non-payment, and Aiken and Watt were adjudicated bankrupts on the 16th of June, 1877.

And thereupon counsel for the insurance company asked the court to charge and instruct the jury, that if they should find the facts as above stated, then Aiken and Watt are to be deemed and held to have
49 been the owners of the cotton so far as to make their transfers of the press receipts of Boyd & Co. valid and superior to the claim of the plaintiff, Kiger. But the court refused to charge the jury as requested, to which refusal the said insurance company excepted, and took this bill of exceptions, which is signed, &c.

June 23, 1878.

(Signed) W. B. WOODS, [SEAL.]
Judge.

Bill of exception No. 2.

Be it remembered that on the trial of this case, evidence was introduced tending to show that the plaintiff, Kiger, resided in Mississippi, and consigned the 196 bales of cotton in question, of which he was the owner, to Aiken and Watt, factors, in New Orleans, with instructions ntained in his letters of March 19th and March 24, 1877, as follows:

"Letter of March 19th, 1877, transcribed on page 44 of this transcript, in bill of exceptions No. 1.

"Letter of March 24th, 1877, transcribed on page 45 of this transcript, in bill of exceptions No. 1."

That Aiken and Watt were put in possession of said cotton by Kiger, and had the control of the said cotton by consent of Kiger, as con-
50 signees, under the letters of *of* instructions aforesaid. That Aiken and Watt stored the cotton in the cotton press of Sam Boyd & Co.

That subsequently the Mechanics and Traders' Insurance Company made a loan to Aiken and Watt of $7,000, taking their notes for the amount, and at the same time Aiken and Watt transferred and delivered to the said insurance company the receipts of Sam Boyd & Co. as collateral security for the payment of said loan.

Cotton press receipts of Sam Boyd & Co. are transcribed on pages of this transcript, Nos. 46 and 47.

At the time said cotton was consigned to said Aiken and Watt by said Kiger he was not indebted to them in any amount whatever, nor was he ever at any time indebted to them; on the contrary, at the time of said consignment of said cotton, and the time of said loans, Aiken and Watt were largely indebted to said Kiger.

That the said press receipts of Boyd & Co. were taken by the said insurance company, without any knowledge on the part of the latter that the plaintiff, or any other person than Aiken and Watt, had any
51 interest in said cotton, and that said loans were made in good faith.

That the notes of Aiken and Watt were protested at maturity, and that they were adjudged bankrupts on the 16th June, 1877.

And thereupon the said insurance company, by its counsel, asked the court to instruct the jury that if they should find the facts as above set forth they should find a verdict for the defendant, the insurance company, to the extent of a sufficient quantity of said cotton to pay the said loans made to Aiken and Watt, but the court refused to charge the jury as requested; to which refusal the said insurance company excepted, and tendered this bill of exceptions, which is signed, &c.

Jan. 23, 1878.

(Signed) W. B. WOODS, [SEAL.]
Judge.

No. 3.

Be it remembered that on the trial of this case, the insurance company, plaintiff in reconvention, put in evidence the receipts of Sam Boyd & Co. (transcribed on pages 46 and 47 of this transcript),
52 and also a written demand on Boyd & Co. for the delivery of the cotton, as follows:

NEW ORLEANS, *June 6th*, 1877.

Messrs. SAM BOYD & CO.:

GENTLEMEN: The Mechanics and Traders' Insurance Company hereby demand of you the delivery to us of 196 bales of cotton, marked Ⓚ, which you agreed to deliver to us by your receipts dated March 26th and April 3d, 1875, now presented to you.

(Signed) LLOYD R. COLEMAN,
Pres't of the Mechanics & Traders' Ins. Company of N. O., La.

It having been previously in evidence that the cotton in question had been carefully kept and preserved by Boyd & Co. until the institution of this suit, when it was taken from Boyd & Co. by the sheriff, acting under the writ of sequestration issued herein, of which seizure Boyd & Co. gave due notice to the Mechanics and Traders' Insurance Company, and called them in warranty in this case, and only declined to bond the cotton in pursuance of an agreement between counsel for pl'ff and def't, by which it was agreed that pl'ff should bond, and that the insurance co. should not.

53 And thereupon the insurance company moved the court to instruct the jury that under and by virtue of the said press receipts Boyd & Co. were bound to deliver to the insurance company the cotton mentioned in the receipts, or respond to the insurance co. under the reconventional demand for the value thereof. But the court refused to instruct the jury as requested, to which refusal the said insurance co. then and there excepted, and took this bill of exceptions, which is signed, sealed, &c.

Jan. 23, 1878.

(Signed) W. B. WOODS, [SEAL.]
Judge.

No. 4.

Be it remembered that on the trial of this cause, evidence was introduced showing that the Mechanics and Traders' Insurance Company loaned to Aiken & Watt $7,000, solely upon the faith of the cotton receipts of Boyd & Co., transferred by Aiken and Watt to the insurance co, and upon the engagement of the said Boyd & Co. to deliver the cotton to the insurance company. It having been previously in evidence that the cotton in question had been carefully kept and

54 preserved by Boyd & Co. until the institution of this suit, when it was taken from Boyd & Co. by the sheriff, acting under the writ of sequestration issued herein, of which seizure Boyd & Co. gave due & timely notice to the Mechanics and Traders' Insurance Company, and called them in warranty in this case, and only declined to bond the cotton in pursuance of an agreement between counsel for pl'ff and de'ft, by which it was agreed that pl'ff should bond and that the insurance co. should not.

And thereupon the said insurance company, by its counsel, moved the court to instruct the jury that if they found the facts as above recited, they should find a verdict in favor of the insurance co. on its reconventional demand against Sam. Boyd & Co. But the court refused to instruct the jury as requested, to which refusal the said insurance co. then and there excepted, and tendered this bill of exceptions, which is signed and sealed, &c.

Jan. 23d, 1878.

(Signed) W. B. WOODS, [SEAL.]
Judge.

No. 5.

55 Be it remembered that on the trial of this case, the court having instructed the jury that under the facts of the case, the plaintiff, Kiger, was entitled to a verdict in his favor, proceeded to charge the jury with reference to the reconventional demand of the Mechanics and Traders' Insurance Co., as follows:

That if the plaintiff, Kiger, was entitled to recover, then, the cotton having been taken possession of by the sheriff on a writ of sequestration issued in favor of Kiger, *then* they should find in favor of Boyd & Co. on the reconventional demand of the said insurance company. To which charge and ruling of the court the insurance co. then and there excepted, and tendered this bill of exceptions, which is signed, &c.

Jan. 23d, 1878.

(Signed) W. B. WOODS, [SEAL.]
Judge.

Motion and order for writ of error.—Extract from the minutes of January 30th, 1878.

B. G. KIGER
vs.
SAM. BOYD & CO. ET AL.

On motion of Thos. Hunton and H. N. Ogden, att'ys for the
56 Mechanics and Traders' Insurance Company, it is ordered that the said insurance company be allowed a writ of error to the Supreme Court of the United States, to operate as a supersedeas, on giving bond with security in the sum of $500, conditioned according to law.

Bond for writ of error.—Filed January 30th, 1879.

Know all men by these presents, that we, the Mechanics and Traders' Insurance Co. as principal, and Lloyd R. Coleman and Fred'k Wing as sureties, are held and firmly bound unto Basil G. Kiger and Sam'l Boyd & Co. in the full sum of five hundred dollars, to be paid to the said Basil G. Kiger and Sam'l Boyd & Co., their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 28th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas lately at a circuit court of the United States, fifth
57 judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Basil G. Kiger was plaintiff, and the Mechanics and Traders' Ins. Co. was defendant in warranty and plaintiff in reconvention vs. Boyd & Co., judgment was rendered against the said insurance company, and the said Mechanics and Traders' Insurance Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Basil G. Kiger and the said Sam'l Boyd & Co., citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the 2d Monday of October next.

Now, the condition of the above obligation is such that if the said Mechanics and Traders' Insurance Company shall prosecute their writ to effect, and answer all damages and costs if they fail to make their

plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) LLOYD R. COLEMAN, [L. S.]
58 *President of Mechanics & Traders' Ins. Company.*
(Signed) LLOYD R. COLEMAN. [L. S.]
(do.) FRED'K WING. [L. S.]

Seal' and delivered in the presence of—
(Signed) THOS. HUNTON.

Approved.
(Signed) T. J. SEMMES,
For Kiger.

Bond approved.
Jan'y 30th, 1878.
(Signed) EDWARD C. BILLINGS, *Judge.*

59 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 58 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial in the case of Basil G. Kiger versus Samuel Boyd & Co., Mechanics and Traders' Insurance Company, warrantors, No. 8236 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 31st day of July, A. D. 1878.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 31st day of July, A. D. 1878.

EDWARD C. BILLINGS, *Judge.*

60 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Basil G. Kiger, plaintiff, and Samuel Boyd, Samuel Jamison, jr., and Richard Herrick, partners under the firm and style of Sam Boyd & Co., and the Mechanics and Traders' Insurance Company, defendants, and between the Mechanics and Traders' Insurance

called in warranty by the said Sam Boyd & Co., partners as aforesaid, and the said Sam Boyd & Co., and between the Mechanics and Traders' Insurance Company, plaintiffs in reconvention, and Samuel Boyd, Samuel Ja nison, jr., and Richard Herrick, partners, defendants in reconvention, a manifest error hath happene l, to the great damage of the said Mechanics and Traders' Insurance Company, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 30th day of January, in the *the* year of our Lord one thousand eight hundred and seventy-eight.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 8236. Mechanics' & Traders' Insurance Company, plaintiff in error, versus Basil G. Kiger and Samuel Boyd & Co., defendants in error. Writ of error. Filed January 30th, 1878. F. B. Vinot, d'y cl'k.

61 UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Basil G. Kiger, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the Mechanics' and Traders' Insurance Company is plaintiff in error, and Basil G. Kiger and Sam'l Boyd & Co. are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mechanics' and Traders' Insurance Company, as in said writ of error is mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 30th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

EDWARD C. BILLINGS,
Judge.

62 (Indorsed:) Basil G. Kiger. United States circuit court. No 8236. Mechanics' and Traders' Ins. Co., plaintiff in error, vs. Basil G. Kiger and Sam'l Boyd & Co., def'ts in error. Citation.

Marshal's return.

Received Jan. 31, 1878, by the U. S. marshal, and on the 15th day of Feb'y, 1878, served a true copy of the within citation in error on Basil G. Kiger, one of the defendants in error herein, through his attorney, Thos. J. Semmes, esq., by handing the same to him, the said Thos. J. Semmes, in person in the city of New Orleans.

W. G. ELLIOTT,
D'y U. S. Marshal.

On this 16th day of February, 1878, personally appeared before me, William G. Elliott, a deputy U. S. marshal for the district of Louisiana, and makes oath that he served a copy of the within citation on Basil G. Kiger, through his attorney, Thos. J. Semmes, esq., as stated in his official return hereon.

W. G. ELLIOTT,
D'y U. S. Marshal.

Sworn to & subscribed before me this 16th day of February, 1878.

F. B. VINOT,
U. S. Comm'r.

63 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Sam'l Boyd & Co., a partnership composed Samuel Boyd, Samuel Jamison, jr., and Richard Herrick, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the Mechanics' and Traders' Insurance Company is plaintiff in error, and Basil G. Kiger and Sam'l Boyd & Co. are defendants in error, to show cause, if any there be, why the judgment rendered against the said Mechanics' and Traders' Insurance Company, as in said writ of error is mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 30th day of January, in the year of our Lord one thousand eight hundred and seventy-eight.

EDWARD C. BILLINGS,
Judge.

64 (Indorsed:) Sam'l Boyd & Co. United States circuit court. No. 8236. Mechanics' & Traders' Ins. Co., plaintiff in error, vs. Basil G. Kiger & Sam'l Boyd & Co., def'ts in error. Citation.

Marshal's return.

Received Jan. 31, 1878, by the U. S. marshal, and on the same day, month, and year served a true copy of the within citation in error on the commercial firm of Sam'l Boyd & Co., defendants in error herein, by handing the same to Richard Herrick in person, one of the defendants

in error, and a member of said commercial firm of Sam'l Boyd & Co., in the city of New Orleans.

W. G. ELLIOTT,
D'y Marshal.

On this 16th day of February, 1878, personally appeared before me William G. Elliott, a deputy U. S. marshal for the district of Louisiana, and makes oath that he served a copy of the within citation on the commercial firm of Sam'l Boyd & Co., as stated in his official return hereon.

W. G. ELLIOTT,
D'y U. S. Marshal.

Sworn to and subscribed before me this 16th day of February, 1878.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 495. The Mechanics & Traders' Insurance Company, plaintiff in error, vs. Basil G. Kiger et al. Louisiana C. C. U. S. Filed 30th September, 1878.

SUPREME COURT U.S.
FILED
JAN 14 1881
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

No. ——.

THE MECHANICS' & TRADERS' INSURANCE CO.,
PLAINTIFF IN ERROR,

VS.

BASIL G. KIGER ET AL.

THOS. HUNTON,
Atty. for Mec. & Traders' Ins. Co.

Clark & Hofeline, Brief Printers, 112 Gravier Street.

Supreme Court of the United States.

No. ——.

THE MECHANICS' & TRADERS' INSURANCE CO.,
PLAINTIFF IN ERROR,

VS.

BASIL G. KIGER ET AL.

This case was commenced in the State Court at New Orleans, by Kiger, a citizen of Mississippi, against Boyd & Co., and the plaintiff in error, citizens of Louisiana, and was removed by the latter to the U. S. Circuit Court for the District of Louisiana.

STATEMENT OF THIS CASE.

Kiger, a planter in the State of Mississippi, consigned to Aiken & Watt, cotton factors and commission merchants of New Orleans, 196 bales of cotton, with private instructions of which plaintiff in error were not informed.

The cotton arrived in New Orleans on the 21st of March, 1877, and was stored in the cotton press of Sam. Boyd & Co.

On the 26th of March, 1877, Aiken & Watt proposed to borrow from the Mechanics' & Traders' Ins. Co. $4,500, and to transfer to the Ins. Co., as security for the loan the cotton press or warehouse receipts of Boyd & Co., for

100 bales of cotton which would be made deliverable to the Insurance Co.

The proposition was accepted, and the stipulated amount of $4,500 was loaned to Aiken & Watt on their note payable forty days after date, with 8 per cent. interest after maturity, and the following receipt of Boyd & Co. was placed in the hands of the Insurance Co., as security for the loan.

Received from Aiken & Watt the following described property, to-wit:

"One hundred bales of cotton Ex. Pargoud, March 27, "1877, (a clerical error—should be March 21. See Peti- "tion of Kiger) Shippers' Press (Printed endorsement in "the body of receipt). 'The within cotton will not be "delivered, except upon the return of this receipt to this "press properly endorsed.' Deliverable to Mechanics' & "Traders' Insurance Co. or order.

"Signed, SAM. BOYD & Co."

"The above described property is covered by insurance "to the amount of forty-four hundred dollars for the term "of ninety days, in the Mechanics' & Traders' Ins. Co., "loss, if any, payable to the Mechanics' & Traders' Ins. "Co.

"Endorsement on the back of the receipts, printed:

"Deliver to ——— or order, the within described pro- "perty. The above order is accepted, and the property "is transferred to ———.

"Signed, SAM. BOYD & Co."

Subsequently, another loan was made to Aiken & Watt

of $2,500, upon a receipt of Boyd & Co., for 96 bales, of like import as the above.

Transcript, pp. 18-19.

Before the maturity of the loans, Aiken & Watt failed and became bankrupts. On the 6th June, 1877, the Insurance Co. demanded, in writing, of Boyd & Co., the delivery of the 196 bales of cotton described in the receipts, and which were deliverable to them by the terms of the press receipts. This demand was refused.

Trans. p. 20.

PLEADINGS.

Kiger sued Boyd & Co., alleging that he was the owner of the cotton, and that Aiken & Watt had failed. The cotton was taken possession of by the sheriff. Boyd & Co. declined to give bond and retain possession as they had the right to do, disclaiming in their answer any intention to bond the property, p. 8, and thereupon the sheriff released the cotton to the plaintiff upon his giving bond in the sum of $10,000, conditioned to have the property forthcoming to abide the event of the suit.

The bond was assigned by the sheriff to Boyd & Co. p. 6. The defendants, Boyd & Co., in their answer, disclaimed any interest in the cotton other than what might result from their having given receipts for the same, and called in warranty the Mechanics' & Traders' Ins. Co. to defend the suit.

The Ins. Co. was, by supplemental petition, made a party to the original suit, and the call in warranty was allowed and sustained by the Court.

The defendants, the Ins. Co., excepted to the call in warranty, but the exception was overruled by the Court, and the Insurance Company *now acquiesces in the ruling of the Court and waives the exception.*

The Insurance Company, in their answer to the petition of Kiger and to the call in warranty, set up the facts hereinbefore stated, and in their answer to the call in warranty, claimed by way of reconvention, that Boyd & Co. should be decreed to deliver to them the cotton as they had stipulated to do, or in default thereof, should pay the loans made to Aiken & Watt, p. 14, the value of the cotton largely exceeding this amount.

Upon the issues thus made, the parties went to trial and there was a verdict in favor of Kiger and of Boyd & Co., under the instructions of the Court and a judgment accordingly.

The plaintiff here assigns for error: 1st. The refusal of the Circuit Judge to instruct the jury as to the issue between Kigér and the Ins. Co., as requested and as shown by the bills of exceptions Nos. 1 and 2, and in maintaining the claim of Kiger. 2nd. And as to the issue between the Ins. Co. and Boyd & Co., that he refused the instructions asked by the Ins. Co. as set forth in the bills of exceptions Nos. 3 and 4, and charged the jury as excepted to in *Bill No. 5*, and in deciding in favor of Boyd & Co.

I. When Aiken & Watt placed in the hands of the Ins. Co. the warehouse receipt containing the stipulation that the cotton was "deliverable to the Insurance Co. or order, this was in legal effect an absolute transfer of the

cotton to the Company. The Company could have sold or disposed of the cotton after the transfer, and upon endorsement of the receipt the warehousemen would have delivered the cotton, and any purchaser in good faith would have acquired the property by an indefeasible title.

The Ins. Co., having advanced money to Aiken & Watt upon the faith of this transfer, without notice of Kiger's interest, was in law a purchaser in good faith. And the law protects them in their title. Bills of lading and warehouse receipts are now placed on the same footing, and the exigencies of commerce demand that they shall be treated as negotiable instruments.

In Conard vs. the Atlantic Ins. Co., in which the effect of the assignment of a bill of lading was considered, Mr. Justice Story said: "By the well settled principles of "commercial law, the consignee is thus constituted the au- "thorized agent of the owner, whoever he may be, to re- "ceive the goods, and by his endorsements of the bill of "lading to a *bona fide* purchaser, for a valuable consider- "ation without notice of any adverse interests, the latter "becomies as against all the world, the owner of the "goods. This is the result of the principle that bills of "lading are transferable by endorsement, and thus may "pass the property." Again: "This is not a mere as- "signment of the bill of lading itself, operating as an "equitable grant of the interest of the owner in that "instrument, but it is of the goods contained in it; and "the bill of lading is referred to by way of description of "the subject matter of the grant." * * * "Th "obvious intention of the parties was to give a specific

In many of the decisions above cited, the doctrine of the assignability of warehouse receipts and instruments of like character, was based upon the general principles of commercial law. But in Louisiana the negotiability of such instruments is expressly declared by statute. Section 8 of the Act of the Legislature, No. 72, approved March 11, 1876, is in these words: "Be it further enacted, etc., That all warehouse receipts as by this act provided, shall be negotiable by endorsement in blank or by special endorsement in the same manner and to the same extent as bills of exchange and promissory notes now are."

Suppose that Kiger had placed in the hands of his agents, Aiken & Watt, his promissory note endorsed in blank with instructions to hold the same till further advised, and Aiken & Watt had sold the note or borrowed money on it, and appropriated the proceeds, would not Kiger be bound for the note? With equal propriety, we contend, he should be bound when he places his personal property in the hands of his agents with authority to store and keep the same, and that agent transfers the property by a warehouse receipt to a party who advances on the property in good faith. The rule of law is that "when one of two innocent parties must suffer, the loss should fall upon him who employed a faithless agent, rather then on one who dealt with that agent in good faith."

So we say that the Circuit Court erred in refusing the instructions asked by the Insurance Company, as set forth in the Bills of Exchange Nos. 1 and 2.

II. But, however, the matter may stand as between Kiger and the Insurance Company, we think the latter has a clear case against Boyd & Co.

Section 2, of the Act of the Legislature, above referred to, provides:

"That any person, firm or association who shall or may be, or in any way become the custodians of any property, goods, products or merchandise whatever, and who may issue receipts therefor, shall not under any circumstances or upon any order or guarantee whatever, deliver property for which such receipts have been issued until the party or parties to whom the receipts were issued or the legal holders thereof, shall have surrendered the same to said custodians for cancellation, and in default of a strict compliance with the provisions of this section of this act, they may be held liable by the legal holder or owner of their receipt for the market value of the property, etc. The 3d Section of the Act prohibits the issuance of duplicate receipts—the remaining sections prescribe the mode of making pledges as between pledgors and pledgees when it is desired to make a pledge. They do not qualify or modify in any manner the obligation *as between the warehouseman and the holder of his receipt.*

We repeat that there was no pledge in this case, in the technical sense of the word. The Ins. Co., *as pledgee*, would have been compelled to wait the maturity of the note for the loan, before disposing of the property pledged, and if not paid, would have been compelled to resort to the cumbersome, troublesome and unusual methods of closing the transaction described in Section 6 of the Act

To avoid all this they laaned their money upon the absolute and unconditional engagement of Boyd & Co., to deliver the property to them at any time when demanded. They had the right to sell the property at any moment after they had the symbolical delivery to them by Boyd & Co.'s receipt. And herein their security differed from a pledge. If the parties had contemplated making a pledge, Aiken & Watt would have simply pledged the warehouse receipt. There would have been no engagement on the part of Boyd & Co. that the cotton for which they had given a receipt to Aiken & Watt was "deliverable to the Ins. Co., 'or order'." But their receipt does state that it was so deliverable, and upon the faith of their engagement so to deliver, the Ins. Co. parted with their money, and Boyd & Co. should be held liable.

Boyd & Co. disclaim any interest in the litigation. Possibly they may have none, as Kiger has given them a bond for $10,000, (?. 26,) which they may suppose will protect them. But so far as the claim of the Ins. Co. against them is concerned, they have a lively interest.

Under the rulings in the case of McNeil vs. Hill, Woolworth's Rep., 96, decided by Mr. Justice Miller, and Harris vs. Bradley, 8th Circuit, Neb., reported in 16 Int. Rev. Record, and cases cited, Boyd & Co. are estopped to deny that they held the cotton for the Ins. Co. They woulp not be allowed to say even that they never received the the cotton or that they hold it for the benefit of Kiger or any one else.

Their engagement was to deliver it to the Ins. Co., or order. This was absolute and unqualified.

X Goodman v. Symonds 20 How. 343
Mathews v. Poythress 4 Gra. 287

It is insisted, therefore, that the Circuit Court erred in refusing to charge the jury as requested on behalf of the Ins. Co. and to which refusal the Ins. Co excepted, as shown by bills Nos. 3 and 4; and also erred in charging the jury as set forth in bill No. 5, Trans., p. 20, 21, 22.

As the petition in this case alleges that the cotton is worth $50 per bale, which is not denied, it is respectfully asked that the judgment of the Circuit Court be reversed, and that Boyd & Co. be condemned to deliver to the Mechanics' & Traders' Ins. Co. the 196 bales of cotton described in their receipts, or in default thereof pay the amounts of the notes described in the answer, and reconventional demand.

THOS. HUNTON,
Atty. for Mec. & Traders' Ins. Co.

N. B. Pages 46, 47, of the Transcript are misprinted; should be 18, 19, and 44–5 should be 17, 18.